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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 Wells Fargo Bank,  
12 Plaintiff,  
13 v.  
14 Atall Sherzad, et al.,  
15 Defendants.  
No. 2:22-cv-00820-KJM-CKD  
ORDER

17 Defendants Atall Sherzad and Mizhgan Alam, who appear pro se, removed this unlawful  
18 detainer action from the Superior Court of Shasta County. *See* Not. Removal, ECF No. 1. The  
19 court has reviewed the complaint and notice of removal and has determined on its own motion  
20 that it lacks subject matter jurisdiction. This action is thus **remanded** to the state court.

When a case “of which the district courts of the United States have original jurisdiction” is initially brought in state court, a defendant may remove it to federal court. 28 U.S.C. § 1441(a). There are two primary bases for federal subject matter jurisdiction: federal question jurisdiction under 28 U.S.C. § 1331, and diversity jurisdiction under 28 U.S.C. § 1332.

25 First, under § 1331, district courts have federal question jurisdiction over “all civil actions  
26 arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under  
27 the longstanding well-pleaded complaint rule, a suit “arises under” federal law “only when the  
28 plaintiff’s statement of his own cause of action shows that it is based upon [federal law].”

1 *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). Federal question jurisdiction  
2 cannot rest upon an actual or anticipated defense or counterclaim. *Vaden v. Discover Bank*, 556  
3 U.S. 49, 60 (2009).

4       Second, under § 1332, district courts have diversity-of-citizenship jurisdiction where the  
5       amount in controversy exceeds \$75,000 and the parties are completely diverse. 28 U.S.C. § 1332.  
6       “Where it is not facially evident from the complaint that more than \$75,000 is in controversy, the  
7       removing party must prove, by a preponderance of the evidence, that the amount in controversy  
8       meets the jurisdictional threshold.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,  
9       1090 (9th Cir. 2003) (per curiam).

10       Here, plaintiff Bank of America alleges defendants are living unlawfully in a residential  
11 property plaintiff owns. *See* Compl. ¶ 2, ECF No. 1 at 12–13. Plaintiff asserts one state law  
12 claim for unlawful detainer and no federal claims. *See generally id.* The parties are not diverse,  
13 and no allegations in the complaint suggest the amount in controversy is greater than  
14 \$75,000. *See id.* at 1 (stating that “demand is less than \$10,000). The court therefore lacks  
15 subject matter jurisdiction.

16 Defendants argue that this court has jurisdiction over the matter under both § 1331 and  
17 under § 1441 “because it is a civil action arising under federal law and in which a federal statute  
18 is drawn into controversy.” Not. Removal at 2. However, there are no federal claims or laws at  
19 issue and even if defendants asserted a defense based on federal law, which they do not, a  
20 defendant cannot create a federal question by asserting such a defense. *See Vaden*, 556 U.S. at  
21 60.

22 A federal district court may remand a case on its own motion where a defendant has not  
23 established federal jurisdiction. *See* 28 U.S.C. § 1447(c); *Enrich v. Touche Ross & Co.*, 846 F.2d  
24 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).  
25 This action is thus **remanded** to the Superior Court of Shasta County.

26 | IT IS SO ORDERED.

27 | DATED: May 20, 2022.

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CHIEF UNITED STATES DISTRICT JUDGE